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eral court for two purposes, (1) to quiet title to land, (2) for an injunction to restrain defendant corporation from cutting and removing timber on the land. Upon the ground that neither party was in possession of the land at the time of the commencement of the suit, defendant argued that plaintiffs had only a legal remedy. Plaintiffs relied upon a decision of the state supreme court for an enlargement of equitable principles. *Held*, that federal court was not bound by the decision of state courts on the matter of general law, but taking jurisdiction upon the second ground it could retain it for further relief by settling the question of title. *Peck* v. *Ayers & Lord Tie Co.* (1902), — C. C. A. —, 116 Fed. Rep. 273.

Defendant corporation urged that plaintiff had an adequate legal remedy by an action of ejectment under the statutes of Tennessee, which provided that if premises were not occupied an action might be brought "against any person claiming an interest therein or exercising acts of ownership at the commencement of the suit," and that by the Judiciary Act of 1789, suits in equity cannot be maintained in the courts of the United States where there may be a plain, adequate and complete remedy at law. The court declared: "This reference at law intends the remedy at common law, and as it existed at the date of the Judiciary Act, and does not refer to remedies which might be thereafter given by statutes of states in their own courts." It is well settled that at common law ejectment could not be maintained where defendant was not in possession. Defendant further maintained that it is a general rule of equity that in order to maintain a suit to clear title complainant must be in possession. The general equity principles however, having been enlarged by the state courts, the plaintiffs invoked the doctrine expressed in *Holland* v. *Challen*, 110 U. S. 15, to show that federal courts administer local laws and usages.

It is well recognized that, as a general rule, federal courts will, in the construction, operation and effect of state statutes, follow the decisions of state courts, and though this may, at times, involve inconsistencies, as when the state courts put different interpretations upon similar statutes, it is a necessary incongruity of our judicial system. *Leeper* v. *Texas*, 139 U. S. 462. But when, as in this case, the state court expressed itself upon a principle of general law, unchanged by legislative enactment, such decision established no precedent obligatory upon the federal courts, and "is a mere variation of decision." *Liverpool, etc. Nav. Co.* v. *Phenix Ins. Co.*, 129 U. S. 397. See also COOLEY ON CONSTITUTIONAL LAW, chap. vi.

SALE — ORDER FOR GOODS — REVOCATION OF ORDER — DAMAGES. — Defendants gave to plaintiff's salesman an order for goods to be shipped at once. The order was reduced to writing and signed by defendants and also, by the salesman, for the plaintiff. Below the names were the words, "This order not subject to countermand." A few minutes after thus giving the order defendants bought similar goods of another person and immediately went to plaintiff's salesman and countermanded the order and notified him that the goods would not be accepted if shipped. Defendants also immediately sent a letter of the same effect to the plaintiff, who received it before the goods ordered were separated from the common stock and delivered to the carrier for shipment. Plaintiff, nevertheless, shipped the goods to defendants, who refused to receive them and left them with the carrier, notifying plaintiff of such action. Plaintiff now sues to recover the price of the goods as upon a complete performance. *Held*, that plaintiff cannot recover. *Oklahoma Vinegar Co.* v. *Carter*, (1902), — Ga. —, 42 S. E. Rep. 378.

The court held that there was a complete contract created between the parties, which, without reference to the clause excluding the right to coun-

termand, could not be terminated by the act of the defendants alone. The countermand, however, operated as a breach of the contract—an "anticipatory breach," not a rescission of it—and plaintiff had an immediate right of action. The action, however, should be to recover damages for the breach of the contract and not to recover the price as for goods sold and delivered. The measure of damages would be, not the price agreed upon, but the difference between the contract price and the market value at the time and place of delivery. When defendants repudiated the contract, plaintiff not only had the right to act upon the theory of a present breach, but was under obligation not to unnecessarily enhance the damages by proceeding after the countermand to finish its undertaking. *Unexcelled Fire Works Co.* v. *Polites*, 130 Pa. 536, 18 Atl. 1058, 17 Am. St. Rep. 788, was chiefly relied upon, but *Davis* v. *Bronson*, 2 N. D. 300, 50 N. W. 836, 16 L. R. A. 655, 53 Am. St. Rep. 783; *Gibbons* v. *Bente*, 51 Minn. 499, 53 N. W. 766, 22 L. R. A. 80; *Clarke* v. *Marsiglia*, 1 Denio (N. Y.) 317, 43 Am. Dec. 670; *Danforth* v. *Walker*, 37 Vt. 239, 40 Vt. 257; *Moline Scale Co* v. *Beed*, 52 Iowa 307, 3 N. W. 96, 35 Am. Rep. 272; *Butler* v. *Butler*, 77 N. Y. 472, 33 Am. Rep. 648; *Hosmer* v. *Wilson*, 7 Mich. 294, 74 Am. Dec. 716; *Ault* v. *Dustin*, 100 Tenn. 366, 45 S. W. 981; and *Roehm* v. *Horst*, 178 U. S. 1, 20 Sup. Ct. Rep. 780, 44 L. ed. 953, were also cited as sustaining the conclusion.

SALE—PERFORMANCE BY SELLER—SECOND TENDER AFTER JUSTIFIABLE REJECTION.—Defendant ordered of plaintiff a cash register to be paid for partly in cash and partly in notes falling due at monthly intervals. Plaintiff delivered a machine to defendant and received the cash and notes. Three days afterwards defendant discovered that the machine delivered was not the kind agreed upon, and returned it to plaintiff with a letter stating the fact. Plaintiff replied saying that it was a mistake, and that the error would be corrected in a few days. Defendant replied saying that he would not now accept any machine, and asking to have the money returned and the notes cancelled. Plaintiff wrote in reply that no countermand of the order would be permitted, and afterward tendered a proper machine which defendant refused to receive. Plaintiff retained the cash payment and brought action upon the notes. On the trial, plaintiff contended that the first machine was delivered merely for temporary use, but defendant was not so advised and did not so understand it. *Held*, that plaintiff could not recover. *Hallwood Cash Register Co.* v. *Lufkin* (1901), 179 Mass. 143, 60 N. E. Rep. 473.

While there may be cases in which a seller who has by mistake delivered a wrong article may, within the time originally fixed, correct the mistake by a delivery of the proper article, [See *Borrowman* v. *Free*, 48 L. J. Q. B. (N. S.) 65; *Tetley* v. *Shand*, 25 L. T. (N. S.) 658, 20 W. R. 206], this was not such a case. A reasonable time for the delivery had expired when the first machine was delivered, and a buyer is under no obligation to permit the seller to make repeated attempts to perform his contract. MECHEM ON SALES, § 1403; *McCormick Harvester Co.* v. *Russell*, 86 Iowa 556, 53 N. W. Rep. 310.

SALE—TRANSFERS OF DRAFT WITH BILL OF LADING ATTACHED—RIGHTS OF BUYER AGAINST TRANSFEREE.—A bank cashed a draft with bill of lading attached, drawn by the consignor on the consignee. The latter paid the draft, but on inspection found the goods were not of the quality contracted for. In an action by the consignee against the bank, *Held*, that he could recover the money paid on the draft. *Searles* v. *Smith Grain Co.* (1902), — Miss. — , 32 S. Rep. 287.

This case follows *Miller* v. *Bank*, 76 Miss. 84; *Landa* v. *Lattin*, 19 Tex. Civ. App. 246, 46 S. W. Rep. 48; *Finch* v. *Gregg*, 126 N. C. 176, 49 L. R. A.